

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

OLIVER L LEWIS

Claimant

APPEAL NO. 17A-UI-11389-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC

Employer

OC: 10/15/17

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Oliver Lewis (claimant) appealed a representative's November 3, 2017, decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with QPS Employment Group (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 28, 2017. The claimant participated personally. The employer participated by Rhonda Heffer, Human Resources Manager, and Krystal Hauersperger, Area Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary agency. The claimant was hired on July 11, 2012. He was last assigned to work for Metokope as a full-time production worker, working 2:00 p.m. to 10:00 p.m. He did not receive any warnings from the employer.

On December 6, 2016, the claimant signed that he read the employer's policies and could request a copy of the Drug and Alcohol Policy at the employer's office. The policy stated, "A positive test result for alcohol shall mean a test which is indicative of a blood/alcohol content of .04 or greater." The policy prohibits employees from reporting for work under the influence of an intoxicating beverage.

On August 3, 2017, the claimant had about two beers around 1:00 p.m. He worked at Metokope until a human resources person asked him to come to the office. The human resources person sent the claimant to a testing facility because he thought there was a reasonable suspicion the claimant was under the influence of drugs or alcohol. The claimant called his cousin and had him drive him to the testing facility.

At the testing facility the claimant submitted to a breath alcohol testing and urine drug testing at approximately 3:39 p.m. on August 3, 2017. The alcohol testing result was 0.088. The employer called the claimant on August 4, 2017, and terminated him for a positive alcohol test. On August 10, 2017, the employer sent the claimant a certified letter of termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant admitted use of alcohol before coming to work and he tested above the allowable limit for blood/alcohol content during the workday on August 4, 2017. The claimant is required to be drug and alcohol free in the workplace. The violation of the known work rule constitutes misconduct. The claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's November 3, 2017, decision (reference 03) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn